

APPEAL NO. 180171
FILED MARCH 15, 2018

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 5, 2017, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues by deciding that: (1) the respondent (claimant) did not sustain a compensable injury on (date of injury); (2) the appellant (carrier) is relieved from liability under Section 409.002 because of the claimant's failure to timely notify his employer pursuant to Section 409.001; (3) the carrier's defense on compensability is limited to the 30 days defense listed on the Notice of Denial of Compensability/Liability and Refusal to Pay Benefits (PLN-1), that was filed with the Texas Department of Insurance, Division of Workers' Compensation (Division) on September 18, 2017; and (4) the carrier has not waived the right to contest compensability of the claimed injury by not timely contesting the injury in accordance with Section 409.021. The carrier appealed, disputing the ALJ's determination that the carrier's defense of compensability was limited to the 30-day defense listed on the PLN-1 that was filed with the Division on September 18, 2017. The carrier argues that the ALJ's conclusion of law and decision is inconsistent with the ALJ's finding of fact regarding the limitation of the carrier's defense of compensability. The appeal file does not contain a response from the claimant.

The following determinations by the ALJ were not appealed and have become final pursuant to Section 410.169: (1) the claimant did not sustain a compensable injury on (date of injury); (2) the carrier is relieved from liability under Section 409.002 because of the claimant's alleged failure to timely notify his employer pursuant to Section 409.001; and (3) the carrier has not waived the right to contest compensability of the claimed injury by not timely contesting the injury in accordance with Section 409.021.

DECISION

Reversed and rendered as reformed.

The claimant testified that he injured his right knee while working in a tight crawl space. In her discussion of the evidence the ALJ stated in part: "[the] [c]arrier provided plain language on its PLN-1 explaining that it was contesting the existence and compensability of an injury along with the failure of [the] [c]laimant to timely notify his employer." The ALJ found in Finding of Fact No. 10 that the carrier disputed the compensability of the claim on the PLN-1 because of the claimant's failure to notify the employer timely and because there was no evidence of an injury. That finding is supported by sufficient evidence and is affirmed.

However, in Conclusion of Law No. 5 the ALJ determined that the carrier's defense on compensability is limited to the 30 days defense listed on the PLN-1 that was filed with the Division on September 18, 2017. The ALJ is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence. *Texas Employers Insurance Association v. Campos*, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). As an appellate reviewing tribunal, the Appeals Panel will not disturb challenged factual findings of an ALJ absent legal error, unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986); *In re King's Estate*, 150 Tex. 662, 244 S.W.2d 660 (1951). In the instant case, the ALJ's determination is inconsistent with her finding of fact regarding the limitation of the carrier's defense of compensability. As previously noted, the ALJ found that the carrier also disputed compensability of the claimant's alleged injury because there was no evidence of an injury and that finding is supported by sufficient evidence. Accordingly, we reverse the ALJ's determination that the carrier's defense on compensability is limited to the 30 days defense listed on the PLN-1 that was filed with the Division on September 18, 2017, and render a new decision that the carrier's defense on compensability is not limited to the 30 days defense listed on the PLN-1 that was filed with the Division on September 18, 2017.

We also note that in the first paragraph on page one of the Decision and Order that contains a summary of the ALJ's holdings, the ALJ incorrectly identified the date of injury alleged as July 17, 2017, rather than (date of injury). Accordingly, we reform the ALJ's holding on the first page to conform to the evidence, finding of fact, conclusion of law, and decision to read as follows: the claimant did not sustain a compensable injury on (date of injury).

The true corporate name of the insurance carrier is **GRAY INSURANCE COMPANY, INC.** and the name and address of its registered agent for service of process is

**ROBERT L. WALLACE
1717 EAST LOOP, SUITE 333
HOUSTON, TEXAS 77029.**

Margaret L. Turner
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Carisa Space-Beam
Appeals Judge